

Submission to Senate Standing Committees on Environment and Communications – Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and related bills (July 2024)

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About the authors

Ms. Ella Vines is a post-doctoral research fellow at Monash Business School's Green Lab, researching regulatory and market mechanisms for net-zero, nature-positive companies. This follows on from her PhD research which considers whether the interaction between the Paris Agreement and other laws including corporations law catalyse the reduction of Australian coal extraction and consumption. Prior to commencing her PhD, she worked as a commercial lawyer in litigation and dispute resolution and business and not-for-profit structuring.

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Summary:

The authors generally support the Nature Positive (Environment Protection Australia) Bill 2024 and related bills proposed by the Australian government to establish the statutory agency of Environment Protection Australia (EPA), to establish the Head of Environment Information Australia (EIA) within the Department of Climate Change, Energy, the Environment and Water (DCCEW) as important steps to address the failing *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). **Our overall submission is that the implementation of legislated national environmental standards, recommended by the Samuel review,¹ is essential to support the functions of the proposed EPA, EIA and, in turn, to more effectively protect the Australian environment. These standards are also essential to support the achievement of nature positive outcomes via the Australian Government's new Nature Repair Market.²** We recognise the policy parameters set by the Australian government³ outline that these

¹ Australian Government Department of Agriculture, Water and the Environment, Graeme Samuel, *Independent Review of the EPBC Act* (October 2020) ('Samuel Review').

² as established by the *Nature Repair Act 2023* (Cth) ('NR Act').

³ Australian Government, Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan* (December 2022); The Hon Tanya Plibersek MP, Minister for the Environment and Water, 'Environment and business to benefit from Nature Positive Plan' (Media release, 16 April 2024).

standards will not be implemented until tranche 3 of its nature positive reforms. In the interim, there are opportunities to strengthen the bills to support better outcomes for nature including in the following ways:

- The authors support the inclusion of what, if passed, will become the first definition of ‘nature positive’ enshrined in Australian law in s 6(1) of the Nature Positive (Environment Information Australia) Bill 2024 (EIA Bill). **However, there are opportunities to strengthen this definition, in line with examples provided by international experts, to support better outcomes for nature.**
- The authors support the EIA Bill’s provision for the Head of EIA to publicly report on whether and to what extent nature positive is being achieved in Australia (s 13(1)). **However, there are opportunities to better integrate the Head of EIA’s advice into Australia’s national environmental goals under s 18(3) of the EIA Bill.**

Implementing legally enforceable national environmental standards

We join the widespread concerns with the compartmentalisation and ordering of the Australian Government’s Nature Positive Plan, which postpone what is arguably the most important substantive component - National Environmental Standards - with the associated risk that these may not be fully implemented. **Without strong underpinning environmental standards, it is unclear whether the bills introduced in July 2024 will contribute to better outcomes for nature.**

Further, ensuring that the forthcoming national environmental standards harmonise with the definition of ‘nature positive’ in the EIA Bill would support the achievement of better outcomes for nature under the Australian Government’s new Nature Repair Market. As provided in the *Nature Repair Act 2023* (Cth), biodiversity projects eligible to participate in this market must be ‘designed to enhance or protect biodiversity in native species (whether the effect on biodiversity occurs within or outside the area)’.⁴ The expression of ‘enhance’ and ‘protect’ requirements in this definition as alternatives rather than both being mandatory appears to be misaligned with the nature positive goal which focusses on net gains for nature as opposed to the aim of merely stabilising nature decline. **We recommend that eligible biodiversity projects under the Nature Repair Market be required to be designed to produce nature positive outcomes as defined in the EIA Bill and underpinned by legally enforceable national environmental standards.**

Aligning the definition of ‘nature positive’ with positive outcomes for nature

Reflecting its recent development and the inherent complexity of nature and biodiversity, understandings of the term ‘nature positive’ are still emerging and there are a range of differing interpretations, which may reduce its normative value.⁵ The EIA Bill proposes the following definition: ‘nature positive is an improvement in the diversity, abundance, resilience and integrity of ecosystems from a baseline’. This definition:

- does not refer to improving the abundance of species and natural processes and only refers to ecosystems; and
- does not enshrine an aim to achieve a full recovery for nature.

Accordingly, we recommend that the EIA Bill adopt a definition of ‘nature positive’ that refers to these essential elements of achieving the nature positive goal.

⁴ NR Act (n 2) s 7.

⁵ E J Milner-Gulland, ‘Don’t dilute the term nature positive’ (2022) 6 *Nature Ecology and Evolution* 1243.

Australia, as the first domestic jurisdiction to enshrine a nature positive goal in its domestic law,⁶ has an opportunity to become a global leader in the proliferation of this norm by adopting a definition that aligns with international experts. The definition provided by the Nature Positive Initiative, a coalition of 27 of the world's largest nature conservation organisations, institutes, and business and finance organisations, is gaining global traction:⁷

Nature Positive is a global societal goal defined as 'Halt and Reverse Nature Loss by 2030 on a 2020 baseline and achieve full recovery by 2050'. To put this more simply, it means ensuring more nature in the world in 2030 than in 2020 and continued recovery after that. Delivering the Nature Positive goal requires measurable net-positive biodiversity outcomes through the improvement in the abundance, diversity, integrity and resilience of species, ecosystems, and natural processes. The Nature Positive goal is designed to drive society to deliver a measurable absolute improvement in the state of nature against a defined baseline, which will in turn improve nature's ability to contribute to human wellbeing.

Definitions such as this focus on the *living components* of nature (species, ecosystems) and highlight indicators of improvement such as diversity, abundance, integrity, and resilience, which provide focal points for measurement and verification. However, inherent in this definition is a recognition that nature encompasses both *living* and *non-living* (soil, water, air, climate) elements and the complex interactions between them. Indeed, improvements in the condition of soil, water, air, and associated processes is required to underpin improvements in biodiversity and vice versa; and climate change is a major threat to biodiversity.⁸ The term biodiversity refers to the diversity within species, between species and of ecosystems.⁹ However, it is often used as a proxy for broader references to nature and natural processes in recognition of this interconnection and complexity.¹⁰

Better integrating the definition of 'nature positive' with Australia's national environmental goals

The EIA bill provides for the Head of EIA (Head) to develop and implement a monitoring, evaluation and reporting framework that provides for the Head to gather information about, and assess and publicly report on, whether and to what extent the nature positive goal is being achieved in the Australian jurisdiction (s 13(1)). However, the bill does not go so far as to require that the nature positive goal underpin Australia's environmental goals. Instead, the bill provides that the Commonwealth Minister for the Environment table a response in parliament to the report provided by the Head within 6 months (s18(1)). This response must specify the environmental targets to be achieved with a timeframe attached (s 18(2)). These targets and timeframes become Australia's national environmental goals (s18(3)). Accordingly, as currently drafted, there appears to be a disconnect between the nature positive goal and Australia's national environmental goals in the EIA Bill. **We submit that the EIA Bill should specify that Australia's national environmental goals must align with the definition of nature positive in s 6(1) of the EIA Bill.**

⁶ The Hon Tanya Plibersek MP, Minister for the Environment and Water, 'Environment Protection Australia legislation introduced to Parliament' (Media release, 29 May 2024).

⁷ Nature Positive Initiative, *A Nature-Positive World: The Global Goal for Nature* (Report, 2021) ('NPI Report') 7.

⁸ IUCN, *Nature positive for business: Developing a common approach* (Report, 2023) ('IUCN Report') 10, 17. See also, *NPI Report* (n 7) 4-10: 'Nature-positive includes a focus on species distribution, abundance, functional traits, genetic diversity, and demographic trends as well as the intactness and integrity of ecosystems and biomes. It also includes the functioning of ecological and global processes such as hydrology, rainfall patterns and migration that support biodiversity, maintain drinking water supplies, sustain agriculture, and ensure a stable climate. ... Abundance and functionality, across scales from local ecosystems to the entire Earth system, should be our goal for all life on Earth.'

⁹ *Convention on Biological Diversity* art 2.

¹⁰ *IUCN Report* (n 8) 17.